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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,755	09/17/2001	Taro Takahashi	225-01	8898
27569	7590	07/29/2004	EXAMINER	
PAUL AND PAUL 2900 TWO THOUSAND MARKET STREET PHILADELPHIA, PA 19103			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/936,755	Applicant(s) TAKAHASHI ET AL.	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The finality of the last office action is withdrawn due to the reference found below which was found on a search to update the previous search.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christiansen et al. (WO 97/03574).

Christiansen discloses an acidic protein beverage as in claims 4, 7 and 8, which contains a low-molecularized pectin (LMP) at a concentration of 0.35%. The original pectin has been treated with an enzyme to de-esterify it (abstract and page 64, lines 15-24). The viscosity is less than 150 mPa's in a solution. In a whey-containing beverage, the modified pectin was used as in claim 5. As a pectin having the claimed viscosity was used in yoghurt and similar results were found in a whey beverage, it is seen that it would have been within the skill of the ordinary worker to arrive at near the claimed viscosities using the modified pectin's of the reference. No patentable distinction is seen in the use of a 5% solution verses a 4% solution (concentration 0.35%) of the reference because the reference discloses that an increase in the amounts of pectin makes a more viscous yoghurt. Therefore, it would have been obvious to use a low-

molecularized pectin to make a product with decreased viscosity as shown by the reference to Christensen et al.

Claim 5 is to the process of adding the LMP to an acidic protein, which is a whey beverage. As above the amount has been shown and the viscosity is within the claimed mPa's (page 64, lines 15-30 and page 65, lines 25-30, page 66, 67). Therefore, it would have been obvious to add the claimed pectin to acidic beverages as shown by Christianson et al.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fishman et al. (6,143,337).

Fishman et al. disclose a process of making a heated pectin by heating the pectin at 100 C and above (abstract and col. 2, lines 48-58). Claim 6 differs from the reference in that a non-LMP is used with the acidic protein food, and heated to 100 C. and above. However, as it is known to heat pectin to this temperature, nothing new or unobvious is seen in heating it with other ingredients, as the pectin would have still acted in the same way. Nothing is seen that the LMP would not have had the claimed viscosity as the process is known. Therefore, it would have been obvious to heat at the claimed temperature as shown by Fishman et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 7-19-04


HELEN PRATT
PRIMARY EXAMINER